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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 February 2001 Grand Jury

11 UNITED STATES OF AMERICA, ) Criminal Case No. \_\_\_\_\_  
12 Plaintiff, ) I N D I C T M E N T  
13 v. ) Title 18, U.S.C., Sec. 371 - Conspiracy;  
14 JAMES L. HILLMAN (1), ) Title 18, U.S.C., Sec. 1341 - Mail Fraud;  
15 PIOTR KODZIS (2), ) Title 18, U.S.C., Sec. 1343 - Wire Fraud;  
16 aka Peter Kodzis, ) Title 18, U.S.C., Sec. 2 - Aiding and  
Defendants. ) Abetting

17 The grand jury charges:

18 INTRODUCTORY ALLEGATIONS

19 At all times material to this Indictment:

20 1. PinnFund, U.S.A., Inc. ("PinnFund," formerly Pinnacle Funding, Inc.) was a mortgage  
21 lending company incorporated in Delaware and headquartered in San Diego County.

22 2. Michael J. Fanghella (charged elsewhere) was PinnFund's Chief Executive Officer  
23 responsible for, among other things, raising capital for use in the company's mortgage loan funding  
24 business. After originating individual residential mortgage loans, PinnFund thereafter sold them in  
25 bundles in the secondary market for future securitization. From these sales the company purportedly  
26 paid to investors in PinnFund a portion of the earnings.

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28 KJK:nlv:San Diego  
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1           3.       Keith G. Grubba (charged elsewhere) was PinnFund’s President and Chief Operating  
2 Officer responsible for, among other things, oversight of the daily operations of the company, including  
3 the subsequent sale of PinnFund loans in the secondary market.

4           4.       John D. Garitta (charged elsewhere) was the Chief Financial Officer of PinnFund  
5 responsible for, among other things, preparation and review of the company’s financial records.

6           5.       Peregrine Funding, Inc. (“Peregrine”) was a California corporation with its principal  
7 offices in Oakland, California whose principal business was raising capital for investment in PinnFund’s  
8 mortgage lending business.

9           6.       Defendant JAMES L. HILLMAN was the President of Peregrine.

10          7.       Defendant PIOTR KODZIS, aka Peter Kodzis was, from on or about September 1998,  
11 an employee of Peregrine, eventually becoming its Director of Operations.

12          8.       Allied Capital Partners (“Allied”) was a California limited partnership that shared its  
13 principal office with its general partner, Peregrine, in Oakland, California. Allied’s business was  
14 exclusively to raise capital for investment in PinnFund’s mortgage lending business.

15          9.       Grafton Partners (“Grafton Partners”) was a California limited partnership that shared  
16 its principal office with its general partner, Peregrine, in Oakland, California. Like Allied, Grafton’s  
17 business was exclusively to raise capital for investment in PinnFund’s mortgage lending business.

18          10.       Six Sigma LLC (“Six Sigma” and, together with Allied and Grafton, collectively, the  
19 “Partnerships”) was a California limited liability company that shared its principal office with its  
20 managing member, Peregrine, in Oakland, California. Like Allied and Grafton, Six Sigma’s business  
21 was exclusively to raise capital for investment in PinnFund’s mortgage lending business.

22          11.       In order to raise capital for PinnFund, Michael J. Fanghella (charged elsewhere) entered  
23 into various “Spot Loan Funding Agreements” (collectively, with amendments and restatements thereto,  
24 the “Spot Loan Funding Agreements”) with defendant JAMES L. HILLMAN, on behalf of Allied,  
25 Grafton, and Six Sigma.

26          12.       The terms of the Spot Loan Funding Agreements required that the money invested in  
27 PinnFund through each of the Partnerships be used for the purpose of mortgage loan funding.

28 //

13. In exchange for the use of the Partnerships' capital, PinnFund committed itself to pay returns to investors based upon the profits resulting from the sale of loans in the secondary market. The purported rate of return often reached approximately 17 percent per annum.

14. From on or about August 1994 until March 22, 2001, Peregrine raised over \$300 million from various investors through each of the three Partnerships, which money was later transferred to PinnFund.

15. From at least 1996 until March 22, 2001, PinnFund suffered persistent operational losses and cash shortfalls.

16. On March 21, 2001, the United States Securities and Exchange Commission filed papers in the United States District Court for the Southern District of California, Civil Case No. 01cv0496H, seeking an order immediately freezing the assets of PinnFund, Peregrine, and various related persons and entities, on the basis of allegations that, among other things, PinnFund had defrauded its investors of over \$100 million. On March 23, 2001, District Judge Marilyn L. Huff issued an order appointing a Receiver to take over PinnFund and freezing the assets of PinnFund and related entities.

## CONSPIRACY

COUNT 1

(Conspiracy to Commit Mail and Wire Fraud)

17. Paragraphs 1 to 16 of this Indictment are realleged and incorporated in this Count as if set forth fully herein.

18. Beginning on a date unknown to the grand jury, and continuing thereafter until on or about March 22, 2001, within the Southern District of California and elsewhere, defendants JAMES L. HILLMAN and PIOTR KODZIS and Michael Fanghella, John Garitta, and Keith Grubba did knowingly and intentionally conspire and agree with each other and others to commit offenses against the United States, to wit, violations of Title 18, United States Code, Section 1341 (mail fraud), and Title 18, United States Code, Section 1343 (wire fraud).

19. It was part of the conspiracy that defendants JAMES L. HILLMAN and PIOTR KODZIS and Michael Fanghella, John Garitta, and Keith Grubba would obtain funds from investors by means of false representations and promises and material omissions of fact.

20. It was a further part of the conspiracy that defendants JAMES L. HILLMAN and PIOTR KODZIS and Michael Fanghella, John Garitta, and Keith Grubba would use their fraud scheme to secure personal financial benefits.

21. It was a further part of the conspiracy that defendants JAMES L. HILLMAN and PIOTR KODZIS and Michael Fanghella, John Garitta, and Keith Grubba would scheme to conceal the fraud by various means and thereby extend and perpetuate the fraud.

22. It was a further part of the conspiracy that defendants JAMES L. HILLMAN and PIOTR KODZIS and Michael Fanghella, John Garitta, and Keith Grubba would scheme to continue PinnFund's business by means of material misrepresentations of PinnFund's financial condition and operations.

23. It was part of the conspiracy that defendants JAMES L. HILLMAN and PIOTR KODZIS and Michael Fanghella, John Garitta, and Keith Grubba would use wire, radio, and television communications and the United States Postal Service and private and commercial interstate carriers to extend and perpetuate the fraud.

## Methods and Means

24. To carry out the above-referenced conspiracy, defendants JAMES L. HILLMAN and PIOTR KODZIS used the methods and means set forth herein, among others. Individually and together, the defendants:

- a. intentionally concealed from investors the nature and receipt of approximately \$20,587,602 in commissions received by defendant JAMES L. HILLMAN between 1994 and 2000 from the purported profits generated by PinnFund;
- b. intentionally concealed from investors the repeated violation of: 1) the terms of the Spot Loan Funding Agreements with PinnFund; 2) the terms of the limited partnership agreements between Peregrine and each of the respective Partnerships; and 3) the claims of offering and promotional materials;
- c. intentionally concealed from investors the failure to perform due diligence review of the nature, soundness, and profitability of PinnFund operations;
- d. intentionally made materially false representations regarding the extent of the due diligence review performed on PinnFund;

- e. intentionally made materially false representations regarding the segregation and control of investor funds;
- f. intentionally concealed from investors the increasing tardiness and inaccuracies of PinnFund's security interest certifications/Exhibits A to the Bailee Agreements and "pipeline" reports, which purported to reflect loans closed or pending funding;
- g. intentionally manipulated the pipeline reports to create a smooth and consistent rate of purported return and intentionally concealed from investors this manipulation of the pipeline reports;
- h. directed the alteration of PinnFund audited financial statements and intentionally concealed this alteration of financial statements;
- i. intentionally concealed from investors the discovery by the Partnerships' own auditors, PriceWaterhouseCoopers, of the existence of multiple versions of purported audited PinnFund financial statements;
- j. intentionally concealed from investors PriceWaterhouseCoopers' concerns of the existence of possible fraud at PinnFund;
- k. intentionally concealed from investors Peregrine's receipt, on behalf of the Partnerships, in October of 2000 of a letter from attorneys for Levitz Zacks and Ciceric, PinnFund's auditors, rescinding all of its audits of PinnFund;
- l. directed the manipulation of PinnFund's accounting of investor capital in a point-in-time reconciliation with PinnFund's financial statements;
- m. intentionally concealed from investors PinnFund's inability to meet, in part or in full, its "earnings" payment obligations to the Partnerships, beginning in approximately November of 2000 until March of 2001;
- n. concealed defendant JAMES L. HILLMAN's infusion of in excess of \$11 million of his personal funds to the Partnerships beginning in approximately November of 2000 until March of 2001 to cover PinnFund's missed payment obligations and intentionally concealed from investors these loans;

- 1 o. intentionally made materially false representations in year-end (2000) reports that  
2 Peregrine had paid 17.18% quarterly “yields” to investors in the fourth quarter  
3 of 2000;
- 4 p. beginning on or about February 12, 2001, intentionally concealed from investors  
5 the receipt of an investigative subpoena relating to PinnFund issued by the  
6 Securities and Exchange Commission;
- 7 q. intentionally made materially false representations regarding PinnFund’s true  
8 loan volume;
- 9 r. intentionally concealed from investors defendant PIOTR KODZIS’ own  
10 withdrawal of approximately \$100,000 on or about March 7, 2001 upon a shorter  
11 notice period than that required of other investors;
- 12 s. intentionally concealed from investors defendant JAMES L. HILLMAN’s own  
13 withdrawal of approximately: \$1,195,858 on or about November 1, 2000;  
14 \$1,167,000 on or about December 1, 2000; \$3,000,000 on or about January 1,  
15 2001; and \$3,413,390 on or about February 1, 2001;
- 16 t. intentionally made materially false representations that on or about December 27,  
17 2000, the Partnerships’ auditors had conducted an audit of 150 PinnFund loan  
18 files chosen by the auditors;
- 19 u. upon PinnFund’s collapse, caused investors to lose more than \$200 million  
20 obtained on the basis of the defendants’ false representations and material  
21 omissions; and
- 22 v. between 1994 and 2000, defendant JAMES L. HILLMAN personally obtained  
23 more than \$20,587,602 in undisclosed commissions and \$37,407,732 in total  
24 income from Peregrine.

25 Overt Acts

26 25. In furtherance of said conspiracy and to effect its objects, defendants JAMES L.  
27 HILLMAN and PIOTR KODZIS committed the following overt acts, among others, in the Southern  
28 District of California and elsewhere:

1           26.     On or about August 1, 1998, defendant JAMES L. HILLMAN, on behalf of Allied  
2 Capital Partners, signed a Spot Loan Funding Agreement with Michael Fanghella, on behalf of  
3 PinnFund.

4           27.     On or about August 1, 1998, defendant JAMES L. HILLMAN, on behalf of Grafton  
5 Partners, signed a Spot Loan Funding Agreement with Michael Fanghella, on behalf of PinnFund.

6           28.     On or about November 13, 1998, defendants JAMES L. HILLMAN and PIOTR KODZIS  
7 solicited and transferred to PinnFund approximately \$1,000,000 for investment in PinnFund via Allied  
8 Capital Partners.

9           29.     On or about December 31, 1998, defendants JAMES L. HILLMAN and PIOTR KODZIS  
10 solicited and transferred to PinnFund approximately \$3,455,000 for investment in PinnFund via Grafton  
11 Partners.

12          30.     On or about April 1, 1999, defendant JAMES L. HILLMAN, on behalf of Six Sigma,  
13 LLC, signed a Spot Loan Funding Agreement with Michael Fanghella, on behalf of PinnFund.

14          31.     On or about May 28, 1999, defendants JAMES L. HILLMAN and PIOTR KODZIS  
15 solicited and transferred to PinnFund approximately \$2,000,000 for investment in PinnFund via Six  
16 Sigma L.L.C.

17          32.     On or about October 24, 2000, defendant JAMES L. HILLMAN met with PinnFund  
18 representatives at PinnFund's offices.

19          33.     On or about December 27, 2000, defendant PIOTR KODZIS met with PinnFund  
20 representatives at PinnFund's offices.

21 All in violation of Title 18, United States Code, Sections 371 and 2.

22                   **FRAUD**

23                   **COUNTS 2-19**

24                   (Mail Fraud)

25          34.     Paragraphs 1 to 33 of this Indictment are realleged and incorporated in Counts 2-19 as  
26 if set forth fully herein.

27          35.     Beginning on a date unknown to the grand jury, and continuing to and including  
28 March 22, 2001, in the Southern District of California and elsewhere, defendants JAMES L. HILLMAN

1 and PIOTR KODZIS, and others known and unknown to the grand jury, did knowingly devise and intend  
2 to devise a scheme to defraud and to obtain money and property by means of materially false and  
3 fraudulent pretenses, representations and promises, and the concealment and omission of material facts,  
4 by the methods and means described in paragraphs 24.a. through 24.v., above.

5 36. On or about the dates set forth below, in the Southern District of California, and  
6 elsewhere, defendants JAMES L. HILLMAN and PIOTR KODZIS, for the purpose of executing and  
7 attempting to execute a scheme to defraud and to obtain money and property by false and fraudulent  
8 pretenses, representations, and promises, and the concealment of material facts, did cause to be placed  
9 in a United States post office or other authorized depository for mail matter, items to be delivered by the  
10 United States Postal Service according to the directions thereon, and caused to be deposited items to be  
11 sent and delivered by private and commercial interstate carriers, on or about the dates and as set forth  
12 below.

<u>Count</u>	<u>Date</u>	<u>Sender</u>	<u>Addressee/Recipient</u>	<u>Item</u>
2	2/5/98	James Hillman	Michael Fanghella	Letter and enclosed billing statement for January 1999
3	3/11/98	James Hillman	William Kuni	Letter of introduction to Grafton Partners investment
4	8/5/98	James Hillman	Michael Fanghella	Letter and enclosed billing statement for July 1998
5	11/5/98	James Hillman	Michael Fanghella	Letter and enclosed billing statement for October 1998
6	5/19/99	James Hillman	Jeffrey Ardantz	Allied Capital investor information
7	6/10/00	Peter Kodzis	Norman Roberts	Letter containing Six Sigma May 2000 return information



1	8	8/9/00	James Hillman	Jeffrey Ardantz	Six Sigma investor information
2					
3	9	10/3/00	James Hillman	Jeffrey Ardantz	Letter re: initial capital contribution and subscription agreement
4					
5					
6	10	10/10/00	Peter Kodzis	Norman Roberts	Letter containing Six Sigma September 2000 return information
7					
8	11	11/10/00	Peter Kodzis	Norman Roberts	Letter containing Six Sigma October 2000 return information
9					
10					
11	12	12/10/00	Peter Kodzis	Norman Roberts	Letter containing Six Sigma November 2000 return information
12					
13	13	1/10/01	Peter Kodzis	Jeffrey Ardantz	Letter containing Six Sigma December 2000 return information
14					
15	14	1/16/01	James Hillman	Jeffrey Ardantz	Letter re: Six Sigma re-investment program
16					
17					
18	15	2/2/01	James Hillman	Jeffrey Ardantz	Letter re: Six Sigma re-investment program
19					
20	16	2/10/01	Peter Kodzis	Jeffrey Ardantz	Letter containing Six Sigma January 2001 return information
21					
22					
23	17	2/10/01	Peter Kodzis	Norman Roberts	Letter containing Six Sigma January 2001 return information
24					
25	18	3/01/01	Peter Kodzis	Jeffrey Ardantz	Letter re: Six Sigma re-investment for February 2001
26					
27					
28					

19	3/12/01	Peter Kodzis	Jeffrey Ardantz	Six Sigma February 2001 return information
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All in violation of Title 18, United States Code, Sections 1341 and 2.

COUNTS 20-29

(Wire Fraud)

37. Paragraphs 1 to 33 of this Indictment are realleged and incorporated in Counts 20-29 as if set forth fully herein.

38. Beginning on a date unknown to the grand jury, and continuing to and including March 22, 2001, in the Southern District of California and elsewhere, defendants JAMES L. HILLMAN and PIOTR KODZIS, and others known and unknown to the grand jury, did knowingly devise and intend to devise a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and the concealment and omission of material facts, by the methods and means described in paragraphs 24.a. through 24.v., above.

39. On or about the dates set forth below, in the Southern District of California and elsewhere, defendants JAMES L. HILLMAN and PIOTR KODZIS, for the purpose of executing and attempting to execute a scheme to defraud and to obtain money and property by false and fraudulent pretenses, representations, and promises, and the concealment of material facts, did cause to be transmitted by wire communication in interstate commerce, writings, signs, and signals, corresponding to the following interstate telephone calls, facsimile transmissions, and movements of investor funds on or about the dates below:

<u>Count</u>	<u>Date</u>	<u>Sender</u>	<u>Addressee/Recipient</u>	<u>Item</u>
20	11/13/98	Allied Capital Partners	PinnFund	Wire transfer
21	3/25/99	C S Wo and Sons	PinnFund	Wire transfer
22	5/4/99	Allied Capital Partners	PinnFund	Wire transfer
23	6/29/99	Sunmark Capital Corp.	PinnFund	Wire transfer
24	11/1/99	Grafton Partners	PinnFund	Wire transfer

25	5/1/00	Six Sigma	PinnFund	Wire transfer
26	5/31/00	Grafton Partners	PinnFund	Wire transfer
27	10/19/00	Stephen Bondi/Asset Alliance; James Hillman	Michael Fanghella/PinnFund	Telephone call
28	10/24/00	Stephen Bondi/Asset Alliance	Michael Fanghella/PinnFund	Facsimile
29	11/4/99	Michael Fanghella	Michael Portnoy	Facsimile

All in violation of Title 18, United States Code, Sections 1343 and 2.

DATED: January 30, 2003.

A TRUE BILL:

\_\_\_\_\_  
Foreperson

CAROL C. LAM  
United States Attorney

By: \_\_\_\_\_  
KEVIN J. KELLY  
Assistant U.S. Attorney

\_\_\_\_\_  
SANJAY BHANDARI  
Assistant U.S. Attorney

\_\_\_\_\_  
NICOLAS MORGAN  
Special Assistant U.S. Attorney